

DOCKET FILE COPY ORIGINAL

ORIGINAL RECEIVED  
AUG 15 1994

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

|                                   |   |                       |
|-----------------------------------|---|-----------------------|
| In re Applications of             | ) | MM Docket No. 93-89   |
| AURIO A. MATOS                    | ) | File No. BPH-911114MS |
| LLOYD SANTIAGO-SANTOS and LOURDES | ) | File No. BPH-911115MP |
| RODRIGUEZ-BONET                   | ) |                       |
| For Construction Permit for a New | ) |                       |
| FM Station on Channel 293A in     | ) |                       |
| Culebra, Puerto Rico              | ) |                       |

To: The Review Board

**SUPPLEMENT TO JOINT REQUEST FOR  
APPROVAL OF SETTLEMENT AGREEMENT**

Aurio A. Matos ("Matos") and Lloyd Santiago-Santos and Lourdes Rodriguez-Bonet ("Santiago and Rodriguez"), by their attorneys, supplement their pending Joint Request for Approval of Settlement Agreement.

1. Matos and Santiago and Rodriguez filed a Joint Request for Approval of Settlement Agreement with the Review Board on March 8, 1994 (the "Joint Request"). A copy of the Settlement Agreement and affidavits of all the principals were provided. The Settlement Agreement contemplates: (a) grant of the Matos application; (b) dismissal of the Santiago and Rodriguez application; (c) Matos' reimbursement of \$50,000.00 of the expenses Santiago and Rodriguez incurred in the prosecution of their application and (d) Matos' hiring of Santiago and Rodriguez on a part-time basis as consultants for a two year period commencing upon issuance of a construction permit to Matos.

2. Pursuant to the Review Board's Order, FCC 94R-11, released July 7, 1994 ("Order"), the parties filed a Supplement to

No. of Copies rec'd  
List A B C D E

04 91

the Joint Request on July 22, 1994. The Supplement provided the Commission with copies of the Consulting Agreements between Matos and Santiago and Rodriguez contemplated by the Settlement Agreement and documentation of the reasonable and prudent expenses incurred by Santiago and Rodriguez in the prosecution of their application. The parties represented in the Supplement that the Escrow Agreements contemplated by the Consulting Agreements would be filed upon execution by all parties.

3. Exhibit A hereto is a copy of the Escrow Agreement between Matos and Rodriguez. Exhibit B is the Escrow Agreement between Matos and Santiago. Both Escrow Agreements appoint Isabel Rodriguez Bonet as Escrow Agent.

4. The parties respectfully request that the documents attached hereto be accepted as a supplement to their pending Joint Request and that the Joint Request and Matos' application be granted.

Respectfully submitted,



Audrey P. Rasmussen  
David L. Hill  
**O'CONNOR & HANNAN**  
1919 Pennsylvania Avenue, N.W.  
Suite 800  
Washington, D.C. 20006  
(202) 887-1400

Counsel for Lloyd Santiago-Santos &  
Lourdes Rodriguez-Bonet



Scott C. Cinnamon  
**BROWN NIETERT & KAUFMAN**  
1920 N Street, N.W.  
Suite 660  
Washington, D.C. 20036  
(202) 887-0600

Counsel for Aurio A. Matos

Date: August 15, 1994

EXHIBIT A

ESCROW AGREEMENT

This Escrow Agreement ("Escrow Agreement") is made and entered into this day of July, 1994, by and among Aurio A. Matos ("Matos") and Lourdes Rodriguez Bonet ("Rodriguez") (collectively, the "Parties") and Isabel Rodriguez Bonet, Esq. ("Escrow Agent").

WHEREAS, the Parties have on July 20, 1994, entered into a Consulting Agreement pursuant to which Rodriguez will work as a part-time (forty (40) hours per month) Business and Financial Consultant for Matos in the establishment and operation of his new FM station in Culebra (the "Station"); and

WHEREAS, Matos has agreed to compensate Rodriguez on a monthly basis at an annual rate of Twelve Thousand Five Hundred Dollars (\$12,500.00) for a term of two years; and

WHEREAS, the Parties have agreed that the monthly salary payments shall be distributed from an Escrow Account; and

WHEREAS, Matos has agreed to place in escrow the first year's salary within ten (10) days of the issuance of a construction permit for the new Culebra station and the second year's salary one year later; and

WHEREAS, the Parties have agreed to use Isabel Rodriguez Bonet, Esq., as the Escrow Agent and said Escrow Agent has agreed to serve as Escrow Agent and abide by the terms of this Agreement and the Consulting Agreement that this Agreement is premised upon;

NOW THEREFORE, in consideration of the promises made herein, the parties agree as follows:

1. Deposit of Funds. Within ten (10) days of the issuance of a construction permit for the new Culebra station to Matos,

Matos shall deliver to Escrow Agent the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00) ("Initial Deposit"). Escrow Agent shall simultaneously upon receipt of Matos' Initial Deposit, provide Matos with a receipt acknowledging such deposit. Matos shall, on the first business day after one year from the Initial Deposit, deliver to Escrow Agent another Twelve Thousand Five Hundred Dollars (\$12,500.00) ("Final Payment", with Initial and Final Payments constituting the "Escrow Funds"). Escrow Agent shall simultaneously upon receipt of Matos' Final Payment provide Matos with a receipt acknowledging such payment. Escrow Agent shall keep the Escrow Funds in an escrow or trust account, segregated from Escrow Agent's own funds. Escrow Agent may not commingle the Escrow Funds with other funds being held in escrow or trust.

2. Release From Escrow. Escrow Agent shall release the Escrow Funds to Rodriguez at the rate of One Thousand and Forty Dollars (\$1040.00) per month on the last day of each month during the two year term, except for the Twelfth and Twenty-Fourth months of the Agreement, when the payment shall be at the rate of One Thousand Sixty Dollars (\$1060.00) per month (the "Monthly Payments"). Escrow Agent shall forward the Monthly Payments to Rodriguez directly and provide evidence of each such payment to Matos. The monthly payments shall be released by the Escrow Agent each month unless the Escrow Agent is notified in writing at least three (3) business days prior to a payment date by Matos that Rodriguez has failed to meet her obligations under paragraphs 5 or 7 of the Consulting Agreement. Matos will also provide a copy of

such notice to Rodriguez. All interest accumulated in the account shall be delivered to Matos by Escrow Agent at the time the account is closed pursuant to paragraph 10, in the manner set forth in paragraph 6.

3. Duties of the Escrow Agent. The duties and responsibilities of the Escrow Agent shall be limited to those expressly set forth herein, and no implied duties or obligations shall be read into this Escrow Agreement as against Escrow Agent.

4. Liability and Indemnification of Escrow Agent. (a) Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel. Escrow Agent shall be authorized to rely on its own good faith determinations as to questions of fact and shall not be liable for any mistakes of fact or error of judgement, or for any acts or omissions of any kind unless caused by its willful misconduct.

(b) Matos and Rodriguez jointly and severally agree to indemnify and hold the Escrow Agent harmless against any loss, claim, damage, demand, liability or expense (including without limitation reasonable attorney's fees) incurred in connection with any action, suit, proceeding, claim or alleged liability arising from this Escrow Agreement, including any action in interpleader filed by Escrow Agent. The Escrow Funds shall be collateral to secure payments of amounts due under paragraph 4(b).

(c) Escrow Agent shall have no implied obligations or responsibilities hereunder, nor shall it have an obligation or

responsibility to collect funds or seek the deposit of funds.

(d) Escrow Agent is not a party to, and shall not be bound by the Consulting Agreement or any other agreement between Matos and Santiago other than this Escrow Agreement.

5. Subrogation and Contribution. As between Matos and Rodriguez, all amounts due to the Escrow Agent pursuant to paragraph 4 above shall be the responsibility of the Party, if any, whose actions or failure to act caused or gave rise to such Claim.

6. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if hand delivered or mailed by certified mail, postage prepaid with return receipt requested, to the Parties as set forth below:

If to Matos:

Aurio A. Matos  
Apartado 7  
Moca, PR 00676

with a copy to:

Scott C. Cinnamon  
Brown, Nietert & Kaufman, Chartered  
1920 N Street, N.W.  
Suite 660  
Washington, D.C. 20036

If to Rodriguez:

Lourdes Rodriguez Bonet  
Marina Bahia Plaza 9 RB - 35  
Cataño, PR 00962

Notices to the Escrow Agent in accordance with the terms of this paragraph shall be as follows:

Isabel Rodriguez Bonet, Esq.  
P.O. Box 19917  
Fdez. Juncos Station  
Santurce, PR 00910

Any notice sent to the Escrow Agent shall also be sent to the Parties. Any notice sent via certified mail shall be deemed given as of the date the post office first attempts delivery.

7. Governing Law. This Escrow Agreement shall be governed and interpreted in accordance with the laws of the Commonwealth of Puerto Rico. The Parties agree to the personal and subject matter jurisdiction of the courts of general jurisdiction of the Commonwealth of Puerto Rico in any suit arising out of this Agreement.

8. Assignment or Successor. This Escrow Agreement shall not be assigned nor shall a successor Escrow Agent be designated without the written consent of the Parties, which consent shall not be unreasonably withheld.

9. Entire Agreement. This Escrow Agreement represents the entire agreement among the Parties on the matters set forth herein, and shall be binding upon the Parties and their respective successors and assigns.

10. Termination of Escrow Agreement. Upon such date that Escrow Agent has released all of the Escrow Funds pursuant to the terms of this Escrow Agreement, this Escrow Agreement shall terminate, and neither the Escrow Agent nor either of the Parties hereto shall have any further obligations hereunder.

11. Titles. The section headings contained in this Escrow Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Escrow Agreement.

12. Amendment. This Escrow Agreement may be amended,

modified, superseded or canceled and any term hereof waived only by a written instrument executed by the Parties hereto.

13. Waiver. The failure or delay of any Party at any time to require a performance of any provisions of this Escrow Agreement shall in no manner operate as a waiver or affect the right at a later time to enforce the same.

14. Counterparts. This Escrow Agreement may be signed in one or more counterparts with the same force and effect as if the signatures were on the same page.

IN WITNESS WHEREOF, the Parties and the Escrow Agent have executed this Escrow Agreement to be effective as of the date first written above.

AURIO A. MATOS

By: 

LOURDES RODRIGUEZ BONET

By: \_\_\_\_\_

ISABEL RODRIGUEZ BONET

By: \_\_\_\_\_

Escrow Agent



modified, superseded or canceled and any term hereof waived only by a written instrument executed by the Parties hereto.

13. Waiver. The failure or delay of any Party at any time to require a performance of any provisions of this Escrow Agreement shall in no manner operate as a waiver or affect the right at a later time to enforce the same.

14. Counterparts. This Escrow Agreement may be signed in one or more counterparts with the same force and effect as if the signatures were on the same page.

IN WITNESS WHEREOF, the Parties and the Escrow Agent have executed this Escrow Agreement to be effective as of the date first written above.

AURIO A. MATOS

By: \_\_\_\_\_

LOURDES RODRIGUEZ BONET

By: Loures Rodriguez Bonet

ISABEL RODRIGUEZ BONET

By: Isabel Rodriguez Bonet  
Escrow Agent

EXHIBIT B

ESCROW AGREEMENT

This Escrow Agreement ("Escrow Agreement") is made and entered into this 10th day of August 1994, by and among Aurio A. Matos ("Matos") and Lloyd Santiago Santos ("Santiago") (collectively, the "Parties") and Isabel Rodriguez Bonet, Esq. ("Escrow Agent").

WHEREAS, the Parties have on July 20, 1994, entered into a Consulting Agreement pursuant to which Santiago will work as a part-time (forty (40) hours per month) Operations Consultant for Matos in the establishment and operation of his new FM station in Culebra (the "Station"); and

WHEREAS, Matos has agreed to compensate Santiago on a monthly basis at an annual rate of Twelve Thousand Five Hundred Dollars (\$12,500.00) for a term of two years; and

WHEREAS, the Parties have agreed that the monthly salary payments shall be distributed from an Escrow Account; and

WHEREAS, Matos has agreed to place in escrow the first year's salary within ten (10) days of the issuance of a construction permit for the new Culebra station and the second year's salary one year later; and

WHEREAS, the Parties have agreed to use Isabel Rodriguez Bonet, Esq., as the Escrow Agent and said Escrow Agent has agreed to serve as Escrow Agent and abide by the terms of this Agreement and the Consulting Agreement that this Agreement is premised upon;

NOW THEREFORE, in consideration of the promises made herein, the parties agree as follows:

1. Deposit of Funds. Within ten (10) days of the issuance of a construction permit for the new Culebra station to Matos,

Matos shall deliver to Escrow Agent the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00) ("Initial Deposit"). Escrow Agent shall simultaneously upon receipt of Matos' Initial Deposit, provide Matos with a receipt acknowledging such deposit. Matos shall, on the first business day after one year from the Initial Deposit, deliver to Escrow Agent another Twelve Thousand Five Hundred Dollars (\$12,500.00) ("Final Payment", with Initial and Final Payments constituting the "Escrow Funds"). Escrow Agent shall simultaneously upon receipt of Matos' Final Payment provide Matos with a receipt acknowledging such payment. Escrow Agent shall keep the Escrow Funds in an escrow or trust account, segregated from Escrow Agent's own funds. Escrow Agent may not commingle the Escrow Funds with other funds being held in escrow or in trust.

2. Release From Escrow. Escrow Agent shall release the Escrow Funds to Santiago at the rate of One Thousand and Forty Dollars (\$1040.00) per month on the last day of each month during the two year term, except for the Twelfth and Twenty-Fourth months of the Agreement, when the payment shall be at the rate of One Thousand Sixty Dollars (\$1060.00) per month (the "Monthly Payments"). Escrow Agent shall forward the Monthly Payments to Santiago directly and provide evidence of each such payment to Matos. The monthly payments shall be released by the Escrow Agent each month unless the Escrow Agent is notified in writing at least three (3) business days prior to a payment date by Matos that Santiago has failed to meet his obligations under paragraphs 5 or 7 of the Consulting Agreement. Matos will also provide a copy of

such notice to Santiago. All interest accumulated in the account shall be delivered to Matos by Escrow Agent at the time the account is closed pursuant to paragraph 10, in the manner set forth paragraph 6.

3. Duties of the Escrow Agent. The duties and responsibilities of the Escrow Agent shall be limited to those expressly set forth herein, and no implied duties or obligations shall be read into this Escrow Agreement as against Escrow Agent.

4. Liability and Indemnification of Escrow Agent. (a) Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel. Escrow Agent shall be authorized to rely on its own good faith determinations as to questions of fact and shall not be liable for any mistakes of fact or error of judgement, or for any acts or omissions of any kind unless caused by its willful misconduct.

(b) Matos and Santiago jointly and severally agree to indemnify and hold the Escrow Agent harmless against any loss, claim, damage, demand, liability or expense (including without limitation reasonable attorney's fees) incurred in connection with any action, suit, proceeding, claim or alleged liability arising from this Escrow Agreement, including any action in interpleader filed by Escrow Agent. The Escrow Funds shall be collateral to secure payments of amounts due under paragraph 4(b).

(c) Escrow Agent shall have no implied obligations or responsibilities hereunder, nor shall it have an obligation or

responsibility to collect funds or seek the deposit of funds.

(d) Escrow Agent is not a party to, and shall not be bound by the Consulting Agreement or any other agreement between Matos and Santiago other than this Escrow Agreement.

5. Subrogation and Contribution. As between Matos and Santiago, all amounts due to the Escrow Agent pursuant to paragraph 4 above shall be the responsibility of the Party, if any, whose actions or failure to act caused or gave rise to such Claim.

6. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if hand delivered or mailed by certified mail, postage prepaid with return receipt requested, to the Parties as set forth below:

If to Matos:

Aurio A. Matos  
Apartado 7  
Moca, PR 00676

with a copy to:

Scott C. Cinnamon  
Brown, Nietert & Kaufman, Chartered  
1920 N Street, N.W.  
Suite 660  
Washington, D.C. 20036

If to Santiago:

Lloyd Santiago Santos  
Marina Bahia Plaza 9 RB - 35  
Cataño, PR 00962

Notices to the Escrow Agent in accordance with the terms of this paragraph shall be as follows:

Isabel Rodriguez Bonet, Esq.  
P.O. Box 19917  
Fdez. Juncos Station  
Santurce, PR 00910

Any notice sent to the Escrow Agent shall also be sent to the Parties. Any notice sent via certified mail shall be deemed given as of the date the post office first attempts delivery.

7. Governing Law. This Escrow Agreement shall be governed and interpreted in accordance with the laws of the Commonwealth of Puerto Rico. The Parties agree to the personal and subject matter jurisdiction of the courts of general jurisdiction of the Commonwealth of Puerto Rico in any suit arising out of this Agreement.

8. Assignment or Successor. This Escrow Agreement shall not be assigned nor shall a successor Escrow Agent be designated without the written consent of the Parties, which consent shall not be unreasonably withheld.

9. Entire Agreement. This Escrow Agreement represents the entire agreement among the Parties on the matters set forth herein, and shall be binding upon the Parties and their respective successors and assigns.

10. Termination of Escrow Agreement. Upon such date that Escrow Agent has released all of the Escrow Funds pursuant to the terms of this Escrow Agreement, this Escrow Agreement shall terminate, and neither the Escrow Agent nor either of the Parties hereto shall have any further obligations hereunder.

11. Titles. The section headings contained in this Escrow Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Escrow Agreement.

12. Amendment. This Escrow Agreement may be amended, modified, superseded or canceled and any term hereof waived only by a written instrument executed by the Escrow Agent and the Parties hereto.

13. Waiver. The failure or delay of any Party at any time to require a performance of any provisions of this Escrow Agreement shall in no manner operate as a waiver or affect the right at a later time to enforce the same.

14. Counterparts. This Escrow Agreement may be signed in one or more counterparts with the same force and effect as if the signatures were on the same page.

IN WITNESS WHEREOF, the Parties and the Escrow Agent have executed this Escrow Agreement to be effective as of the date first written above.

AURIO A. MATOS

By: 

LLOYD SANTIAGO SANTOS

By: \_\_\_\_\_

ISABEL RODRIGUEZ BONET

By: \_\_\_\_\_

Escrow Agent

c:\wp51\acc\culebra\escrow.fin

12. Amendment. This Escrow Agreement may be amended, modified, superseded or canceled and any term hereof waived only by a written instrument executed by the Escrow Agent and the Parties hereto.

13. Waiver. The failure or delay of any Party at any time to require a performance of any provisions of this Escrow Agreement shall in no manner operate as a waiver or affect the right at a later time to enforce the same.

14. Counterparts. This Escrow Agreement may be signed in one or more counterparts with the same force and effect as if the signatures were on the same page.

IN WITNESS WHEREOF, the Parties and the Escrow Agent have executed this Escrow Agreement to be effective as of the date first written above.

AURIO A. MATOS

By: \_\_\_\_\_

LLOYD SANTIAGO SANTOS

By: Lloyd Santiago Santos

ISABEL RODRIGUEZ BONET

By: Isabel Rodriguez Bonet  
Escrow Agent



**CERTIFICATE OF SERVICE**

I, Phyllis D. Lee, a secretary at the law firm of Brown Nietert & Kaufman, Chartered, do hereby certify that I caused a copy of the foregoing "**SUPPLEMENT TO JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT**" to be sent via first class U.S. mail this 15th day of August, 1994 to each of the following:

Honorable Joseph A. Marino, Chairman\*  
The Review Board  
Federal Communications Commission  
2000 L Street, N.W.  
Washington, DC 20554

Honorable Marjorie Reed Greene\*  
The Review Board  
Federal Communications Commission  
2000 L Street, N.W.  
Washington, DC 20554

Allan Sacks, Chief of Law\*  
The Review Board  
Federal Communications Commission  
2000 L Street, N.W.  
Washington, DC 20554

Gary Schonman, Esq.\*\*  
Hearing Branch  
Federal Communications Commission  
2025 M Street, N.W., Room 7212  
Washington, DC 20554

  
\_\_\_\_\_  
Phyllis D. Lee

- \* - Via Hand Delivery
- \*\* - Via FCC Mailroom

scc\svc.lst